JURISDICTION	**:**	SUPREME COURT OF WESTERN AUSTRALIA IN CIVIL
CITATION	**:**	YAP -v- MATIC [No 5] [2023] WASC 15
CORAM	**:**	ARCHER J
HEARD	**:**	24 & 30 JANUARY 2023
DELIVERED	**:**	30 JANUARY 2023
PUBLISHED	**:**	1 FEBRUARY 2023
FILE NO/S	**:**	CIV 1106 of 2022
BETWEEN	**:**	VIVIEN JIT SIEN YAP First Plaintiff EMPIRE SONS (AUSTRALIA) PTY LTD T/AS RAY WHITE (DALKEITH CLAREMONT) Second Plaintiff AND SANDI MATIC Defendant

Catchwords:

Contempt of Court – Whether conduct had the tendency to interfere with the course of justice – Whether it had the tendency to improperly deter the plaintiffs from persisting in their action against the defendant

Legislation:

Rules of the Supreme Court 1971 (WA)

Result:

Defendant found guilty of contempt

Category: B

Representation:

Counsel:

First Plaintiff	:	M L Bennett
Second Plaintiff	:	M L Bennett
Defendant	:	In Person

Solicitors:

First Plaintiff	:	Bennett
Second Plaintiff	:	Bennett
Defendant	:	Not Applicable

Cases referred to in decision:

Day v Woolworths Group Limited [2021] QCA 42
Resolute Limited & Anor v Warnes [2000] WASCA 359
Witham v Holloway (1995) 183 CLR 525
Yap v Matic [2022] WASC 181
Yap v Matic [No 3] [2022] WASC 370
Yap v Matic [No 4] [2022] WASC 422

ARCHER J:

(This judgment was delivered extemporaneously on 30 January 2023 and has been edited to correct matters of grammar, include complete references and add formatting.)

Introduction

1 The plaintiffs filed an application to commit the defendant for criminal contempt pursuant to O 55 r 4 of the *Rules of the Supreme Court 1971* (WA) (**RSC**). The application is based on an email apparently sent by the defendant on 16 August 2022. The email was sent to four staff members of the plaintiffs' solicitors: Jessica Border, Nathan Ebbs, Martin Bennett, and Sally Elliott. The email was also sent to the Chief Justice and Justice Solomon of this court. It was copied to various members of parliament.

2 The author of the email alleged that the plaintiffs' solicitors were committing fraud and deliberately submitting materials fabricated by their clients to dishonestly benefit their clients. The author wrote that the email should be treated as a notice of intention to report a crime to various authorities.

3 The plaintiffs submit that the email plainly had a very clear practical tendency to deter the plaintiffs from persisting in their action against the defendant. The plaintiffs assert, therefore, that the sending of the email was a criminal contempt.

Background

4 The history of the proceedings was comprehensively set out by Solomon J in ***Yap v Matic***[1] and subsequent decisions his Honour has published in this matter.[2] Much of what follows draws upon, or reproduces, his Honour's remarks.

5 On 10 February 2022, the plaintiffs filed a writ in this court seeking an injunction and damages against the defendant, Sandi Matic, in respect of statements and threats he had allegedly made regarding the plaintiffs' business and economic interests (**Substantive Claim**). On the same day, the plaintiffs filed a motion for interlocutory relief and sought an urgent ex parte hearing to restrain Mr Matic from doing various things that the plaintiffs perceived Mr Matic had threatened, or

[1] ***Yap v Matic*** [2022] WASC 181 [1] - [109].
[2] See ***Yap v Matic [No 3]*** [2022] WASC 370 and ***Yap v Matic [No 4]*** [2022] WASC 422.

was intending to do, that would damage the plaintiffs' reputation and economic interests.

6 The urgent ex parte hearing was heard by Solomon J on 11 February 2022. On that day, Solomon J made interim orders. Order 1(iv) of those orders (**February Order**) provided that:[3]

> The defendant is restrained and an injunction is granted restraining the defendant until further order of this Honourable Court from … threatening the first plaintiff.

7 Justice Solomon also adjourned the application for the interim injunction to 14 February 2022. On that date, Mr Matic appeared. There were then several subsequent hearings in relation to this matter.

8 On 22 March 2022, the plaintiffs filed a chambers summons, alleging that Mr Matic had committed a contempt by breaching the February Order. The plaintiffs relevantly relied on an email sent by Mr Matic to the first plaintiff's solicitors, Bennett + Co (as they then were) on 16 March 2022. I will refer to this as the alleged '**March 2022 Contempt**'. Subsequently, Solomon J gave the plaintiffs leave to amend their application, and they did so on 5 August 2022.

9 On 18 August 2022, the plaintiffs filed a Notice of Motion alleging a further contempt on 16 August 2022 (alleged '**August 2022 Contempt**'). This is the application the subject of these reasons. As noted in the introduction, this application is based on an email apparently sent by the defendant on 16 August 2022. The motion was listed for hearing on 24 January 2023, before me.

10 On 27 October 2022, Solomon J found that Mr Matic was guilty of the March 2022 Contempt by reason of his breach of the February Order.[4] As Mr Matic did not appear at the hearing on 27 October 2022, and to give him further time to consider his position, Solomon J deferred the issue of the appropriate penalty to a hearing on 25 November 2022.

11 Mr Matic did not attend on 25 November 2022. On that day, Solomon J made an order requiring Mr Matic to appear in person in this court at 2.00 pm on Wednesday, 30 November 2022, for delivery of the reserved decision.[5]

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[3] ***Yap v Matic*** [15].
[4] ***Yap v Matic [No 3]*** [19].
[5] ***Yap v Matic [No 4]*** [3].

12 Mr Matic did not attend court at that time. There was no doubt that he had received and was aware of the order that he appear at that hearing, in person.[6] His Honour was satisfied that Mr Matic's failure to appear when he had been ordered to do so was, on its face, grounds for the court to charge Mr Matic with contempt of court. I will refer to this as the alleged '**November 2022 Contempt**'.

13 As Mr Matic had failed to appear, Solomon J again adjourned the penalty hearing in relation to the March 2022 Contempt, fixing a new date of 7 December 2022. His Honour also made orders to ensure that Mr Matic attended on that date, as follows:[7]

> 2. Warrant is issued for the arrest of Sandi Matic of [redacted].
>
> 3. The warrant is to lie until 4.00 pm on 6 December 2022 and shall be discharged in the event that Mr Matic surrenders himself to police custody before that time.
>
> 4. Mr Matic is to be remanded in custody and brought before the court at 4.30 pm on Wednesday 7 December 2022 to be formally charged with contempt of court by reason of his failure to appear, in breach of the court's orders dated 25 November 2022 that he appear in person at the Supreme Court on 30 November 2022.

14 Again, there was no doubt that Mr Matic had received and was aware of these orders.[8] Despite this, Mr Matic did not surrender himself to police custody by the deadline. He was arrested at 12.45 pm on 7 December 2022 and brought to court.[9]

15 On that day, 7 December 2022, Solomon J dealt with the penalty hearing for the March 2022 Contempt and made programming orders in relation to the alleged November 2022 Contempt.

16 In relation to the March 2022 Contempt, his Honour determined that the appropriate penalty was to order that the defendant pay the plaintiffs' costs of the contempt application on an indemnity basis, fixed in the amount of $16,057.00, and payable forthwith.[10]

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[6] ***Yap v Matic [No 4]*** [4] - [5].
[7] ***Yap v Matic [No 4]*** [6] - [8].
[8] ***Yap v Matic [No 4]*** [9] - [13].
[9] ***Yap v Matic [No 4]*** [11] and [14].
[10] ***Yap v Matic [No 4]*** [32] and [34].

17 In relation to the alleged November 2022 Contempt, his Honour fixed the hearing for 13 December 2022.[11] On 13 December 2022, his Honour found Mr Matic guilty of the November 2022 Contempt and listed the penalty hearing to be heard on 30 January 2023.

The application

18 As noted in the introduction, the application before me is based on an email apparently sent by the defendant on 16 August 2022 (**August Email**).

19 The August Email was sent to four staff members of the plaintiffs' solicitors: Ms Border, Mr Ebbs, Mr Bennett, and Ms Elliott. The email was sent to the Chief Justice and Justice Solomon of this court. It was copied to various members of parliament.

20 The August Email referred to the evidence that had been adduced in the plaintiffs' injunction application, including notes of a Mr Angus Mead which had been annexed to an affidavit sworn by the first plaintiff (**Yap Affidavit**).[12] Although the August Email referred to the notes as having been labelled 'VJY-5', it plainly intended to refer to annexure 'VJSY-5'. That annexure contained what was said to be a true copy of a note written by Mr Mead of telephone calls he had had with Mr Matic. Mr Mead was the national relationship manager for the Ray White Group. The August Email complained that the plaintiffs' solicitors had refused to provide those notes to Mr Matic. From the context, it is clear that the author of the August Email did not accept that the notes that had been annexed to the Yap Affidavit were a true copy of Mr Mead's notes. The August Email asked why the plaintiffs' solicitors continued to refuse to provide those notes and then stated:

> Why do you continue to commit fraudulent acts?

21 The August Email later turned to electronic files which the plaintiffs had contended were recordings of conversations between Mr Mead and Mr Matic. The August Email relevantly stated:

> Secondly, you previously provided 2 videos which were alleged to be the phone recordings of the call between angus mead and Sandi Matic - a call initiated by Angus Mead.

[11] ***Yap v Matic [No 4]*** Order 3.
[12] Affidavit of Vivien Jit Sien Yap filed 10 February 2022.

> The files you sent are not telephone conversations and are easily fabricated using computer software. The files have had metadata stripped
>
> There is no possibility of 1 single call to be recorded in 2 separate files and for the 2 files to have audio overlap where one ends and another one starts so this has been altered also.
>
> You've been put on Notice that you are committing fraud & submitting altered, manipulated and fabricated files & recordings that you know to be unauthentic and altered in order to obtain a benefit by deception for yourselves personally & for your client & furthermore to gain access by deception into the Trust of SANDI MATIC.
>
> Consider this as notice of intent to report a crime to Australian Federal Police & the Organised Crime Squad of Western Australia Police within the next 48 hours & am seeking assistance from [the] Attorney-General of Western Australia & Local MPs too assist regarding this matter.
>
> …
>
> To members of Parliament that have been included in the email, if you have capacity to assist with the matter to prevent fraud being committed by the abovementioned men/women in their private capacity please contact me via email or [phone number redacted]

The evidence

22 The plaintiffs rely on the affidavit of Jessica Louise Border (**Border Affidavit**), which annexed the email chain culminating in the August Email.

23 The plaintiffs further rely on various affidavits filed in this court by Mr Matic in these proceedings.[13] The cover page of these affidavits show Mr Matic's email address as the same email address from which the August Email was sent.

24 The plaintiffs also rely on the Yap Affidavit that annexed Mr Mead's notes, referred to in the August Email.

[13] A three page affidavit of Sandi Matic dated 2 March 2022 and filed 3 March 2022, a 19 page affidavit of Sandi Matic dated 2 March 2022, an affidavit of Sandi Matic dated 8 April 2022 (described as the 'Third Affidavit'), four affidavits of Sandi Matic dated 11 April 2020 (described as 'Fourth Affidavit', 'Fifth Affidavit', 'Sixth Affidavit', and 'Seventh Affidavit'), and two affidavits of Sandi Matic dated 13 April 2020 (described as 'Eight Affidavit' and 'Ninth Affidavit').

The legal principles

25 The plaintiffs contend that the publication of the August Email was a contempt because it had a real tendency to interfere with the administration of justice. Such a contempt is a criminal contempt.[14]

26 This form of contempt was discussed by Ipp J, with whom Kennedy and Miller JJ agreed, in ***Resolute Limited & Anor v Warnes***.[15] Ipp J summarised the principles as follows (citations omitted):

> (a) The charge must be established beyond reasonable doubt.
>
> (b) The claimant must prove, according to the criminal standard, that the published material has, as a matter of practical reality a real (or clear) and definite tendency to interfere with the course of justice in a particular case.
>
> (c) Because of its exceptional nature this summary jurisdiction has always been regarded as one which is to be exercised with great caution.
>
> (d) Intention to interfere with the due administration of justice is not necessary to constitute a contempt. Where, however, intent to interfere has been proved, this has usually been sufficient to sustain a prosecution.
>
> (e) The gravamen of the category of criminal contempt in which improper pressure is placed on a party to court proceedings through public dissemination of material is the tendency to deter the litigant, improperly, from obtaining curial vindication of its rights. Successful interference with a party's conduct of proceedings is not necessary for proof of liability for contempt by improper pressure.
>
> (f) It is an open question as to whether the tendency is to be measured against the capacity of the particular litigant involved to withstand pressure, or whether the Court should have in contemplation some hypothetical litigant of "ordinary" fortitude.
>
> (g) In punishing certain types of interference with litigants the law distinguishes between proper and improper pressure.

[14] ***Witham v Holloway*** (1995) 183 CLR 525, 530.

[15] ***Resolute Limited & Anor v Warnes*** [2000] WASCA 359 [13]. See also ***Day v Woolworths Group Limited*** [2021] QCA 42 [12].

The hearing

27 Mr Matic attended the hearing on 24 January 2023, but elected not to defend the proceedings. Instead, he sought to engage the court in irrelevant debates or assert he was only present as a 'personal representative' for the defendant,[16] or as 'amicus curiae'.

28 Nevertheless, as he was present, I sought to explain to him the nature of the charge, the elements the plaintiffs would have to prove to establish guilt, and the burden of proof. I explained to him his right not to incriminate himself, but that he could surrender that right and give evidence if he wished to do so. I explained to him the difference between evidence and submissions. I explained to him the seriousness of the charge and the potential penalties, and I urged him to get legal advice.

29 It was plain to me that Mr Matic fully understood the proceedings. It was plain that his statements during the hearing were not directed to a defence of the charge, nor to assist the court.

30 For example, he denied he had a last name.[17] He said he had filed documents with the court in which he was referred to as 'Sandi'.[18] When I put to him that there had been documents filed in the court that purported to be from somebody called Sandi Matic, and asked 'Is that you?', he asked me who I was talking to.[19] When I asked him if he had sent emails to the court or the plaintiffs that said 'Sincerely Sandi Matic, all rights reserved', he said he did not recall.[20]

31 Shortly afterwards, this exchange occurred:[21]

> **MATIC, MR:** Your Honour, just to clear up any misunderstandings, I am not self-represented. I'm here representing the person. If that's not something that you can entertain, I will happily leave, if you like.
>
> **ARCHER J:** If you're not Sandi Matic, yes, leave.
>
> **MATIC, MR:** Well, it depends how you pronounce it or how you write it down. If it's nom de guerre or if it's the way I write it, I can't - - -
>
> **ARCHER J:** How do you write it?

[16] ts 263.
[17] ts 269 and ts 271.
[18] ts 269.
[19] ts 269.
[20] ts 269. See also ts 273.
[21] ts 270.

> **MATIC, MR:** In lower letters. Lowercase letters.
>
> **ARCHER J:** All right. Are you Sandi Matic in lowercase letters?
>
> **MATIC, MR:** I'm not sure what you mean. I am a man Sandi. …

32 Later, when asked 'Are you a man Sandi Matic?', he replied 'I'm the man Sandi. I do not have a last name'.[22]

33 Later still, he said 'I am here as an agent of the person that's named as the defendant. I'm the beneficiary of that trust …'.[23]

34 Mr Matic's statements during the hearing stand in stark contrast to his initial approach to these proceedings.

35 On 14 February 2022, Mr Matic appeared before Solomon J on the relisting of the application for an interim injunction. This was the first occasion on which he had appeared in this court in relation to these proceedings. This exchange occurred:[24]

> **SOLOMON J:** Are you Mr Matic? Yes. Please come forward, Mr Matic. Right. So, Mr Matic, you're appearing on your own behalf?
>
> **MATIC, MR:** Yes. Yes, your Honour.
>
> **SOLOMON J:** Yes. And you've been served with the papers in relation to the orders that I made on Friday?
>
> **MATIC, MR:** Yes. They were dropped off on the floor while cleaners were at home.
>
> **SOLOMON J:** I'm sorry?
>
> **MATIC, MR:** They were dropped on the front step as the cleaners were at home, so I wasn't – yes. Handed them to me.
>
> **SOLOMON J:** You have them. You're aware of them.
>
> **MATIC, MR:** I've got them, yes. Yes, that's right.
>
> **SOLOMON J:** Yes. And you're aware of the orders that have been made?
>
> **MATIC, MR:** I've not had a chance to get legal advice. I have looked through it, but I don't really understand what it's - - -

[22] ts 271.
[23] ts 273.
[24] ts 6 - 7 (of 14 February 2022).

> **SOLOMON J:** Right. Are you in - - -
>
> **MATIC, MR:** - - - understand what it's about. I don't really understand what the order is.
>
> **SOLOMON J:** Right. Are you intending to get legal advice?
>
> **MATIC, MR:** Depending on how this goes, I guess.
>
> **SOLOMON J:** All right. …
>
> **MATIC, MR:** I've – your Honour, I'm still not understanding what the actual order is or what statement of claim. Because everything is done on a hypothetical event happening in the future, and it's (indistinct) all fabricated. I've actually got a recording of the conversation that Mr Angus is referring to. None of those things that he noted in the letter that were sent to Mrs Yap were ever, ever said. So I've got no idea what this is about.
>
> **SOLOMON J:** Right. Have you provided a copy of that recording to the plaintiff's lawyers?
>
> **MATIC, MR:** No, I haven't. And no-one's even contacted me apart from something being dropped on a door step, nor did I know there was anything happening on Friday.
>
> **SOLOMON J:** Right.
>
> **MATIC, MR:** This is all, sort of, come about as I sent a letter of dispute outlining a few items back in October - - -
>
> **SOLOMON J:** Yes, I've seen your - - -
>
> **MATIC, MR:** Yes. So - - -
>
> **SOLOMON J:** - - - correspondence.
>
> **MATIC, MR:** - - - it's been – I don't understand – they've not sent anything back. And, all of a sudden, there's an injunction.

36 It was only when Solomon J asked Mr Matic if he objected to the injunction that Mr Matic began to make statements that he was not a person, but was a 'living man'. Even then, Mr Matic did not dispute that his name was 'Sandi Matic'.[25]

37 The matter was next before Solomon J on 21 February 2022. Mr Matic appeared by telephone. Again, Mr Matic agreed he was

[25] ts 8 - 9.

acting for himself in the matter,[26] and responded to questions put to him as 'Mr Matic'.[27] It was only when Mr Matic was told he would need to file an appearance that Mr Matic began to raise issues as to his name. He objected to being referred to as 'Sandi Matic' in upper case letters.[28] However, he continued to answer when addressed as 'Mr Matic'.

38 When the matter was next before Solomon J, on 10 March 2022, Mr Matic again answered to 'Mr Matic'.[29] However, he almost immediately began to make claims as to his identity. He asked if the defendant was 'a legal person or is that me as a living human being …'[30] Nevertheless, he continued to answer when addressed as 'Mr Matic'.

39 The matter was next heard on 12 April 2022. On that day, Mr Matic immediately began by stating he represented 'the legal entity named'.[31] Nevertheless, he again answered when addressed as 'Mr Matic'.

40 Similarly, on 23 May 2022, Mr Matic said he was 'here in flesh, not in person', but again answered when addressed as 'Mr Matic'.[32]

41 On 11 August 2022, Mr Matic asked to be called 'Sandi'. He asserted that he was not the defendant, although he agreed his name was 'Sandi Matic'.[33] Mr Matic again maintained he was not the defendant in hearings on 2 September 2022[34] and 13 December 2022.[35]

42 In addition, Mr Matic has filed multiple affidavits that he commences by deposing 'I Sandi Matic'.

43 It is further plain that Mr Matic is not unsophisticated or unintelligent, and is able to follow the proceedings when he chooses to.[36]

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[26] ts 19.
[27] See throughout the transcript, pages 19 - 45.
[28] ts 38.
[29] ts 47.
[30] ts 49.
[31] ts 61.
[32] ts 139.
[33] ts 162.
[34] ts 176.
[35] ts 235 - 236.
[36] See, for example, ts 87, in which Mr Matic referred back to a statement made by Mr Bennett at ts 77, and used, as he himself said, a metaphor.

44 Nevertheless, in view of the seriousness of the charge and the potential penalties, I adjourned the hearing until 30 January 2023 to give Mr Matic the opportunity to obtain legal assistance.

45 Today, 30 January 2023, Mr Matic did not appear.

Discussion

46 I am satisfied beyond reasonable doubt that Mr Matic sent the August Email.

47 First, the August Email was sent from the email address Mr Matic claimed as his own on cover sheets of numerous affidavits he filed in this court.

48 Second, an email preceding the August Email in the chain (which also purports to have been sent by Mr Matic) refers to the author having received materials from the plaintiffs' solicitors in relation to the Substantive Claim.

49 Third, the August Email itself refers to the author having received the notes of Mr Mead annexed to the Yap Affidavit.

50 It is an irresistible inference that the August Email was sent by Mr Matic. I am satisfied that this is the only inference reasonably open.

51 The August Email accused the plaintiffs' solicitors of 'committing fraud & submitting altered, manipulated and fabricated files & recordings that you know to be unauthentic and altered in order to obtain a benefit by deception for yourselves personally & for your client'.

52 The August Email asserted, among other things, that the electronic material said to be recordings of conversations between Mr Matic and Mr Mead had been fraudulently created. From the context as a whole, the only reasonable construction of the August Email is that it alleged that the plaintiffs had created the fraudulent recordings and supplied them to their solicitors, and that the solicitors (knowing they were fraudulent) then provided them to Mr Matic.

53 The author said that the August Email should be considered to be a notice of intention to report a crime to various authorities. From the context as a whole, the only reasonable construction of this is that the author intended to allege to those authorities that both the plaintiffs and their lawyers committed a crime.

54 The August Email was copied to various members of Parliament. The plaintiffs point out that absolute privilege attaches to parliamentary debate. Therefore, if this matter were to be raised by parliamentarians in parliament, the damage to the reputation of the plaintiffs would be incapable of remedy.[37]

55 I am satisfied beyond reasonable doubt that, objectively construed, the August Email had a tendency to deter the plaintiffs from continuing their action against the defendant. The practical effect of the August Email was to put the plaintiffs and their solicitors on notice that the author was willing to disseminate serious allegations against the plaintiffs and their lawyers to judicial officers and members of parliament, and intended to make those serious allegations to various authorities.

56 This amounted to improper pressure. The allegations were extremely serious, and expressed in emphatic terms. They were disseminated beyond the clients and their lawyers to politicians and judicial officers.

Conclusion

57 For these reasons, I am satisfied beyond reasonable doubt of the following:

1. Mr Matic sent the August Email.

2. The August Email was copied to two judges and various members of Parliament.

3. The August Email asserted that the plaintiffs had committed fraud.

4. The August Email announced that the author intended to report the conduct of the plaintiffs and their lawyers as a crime.

58 Given these circumstances, I am satisfied beyond reasonable doubt that the August Email had tendency to deter the plaintiffs, improperly, from persisting in their action against the defendant.

59 Accordingly, I find Mr Matic guilty of criminal contempt.

[37] ts 287.

Orders

60 I would make the following orders:

1. The defendant is guilty of criminal contempt.

2. A hearing will be held at 10.00 am on 3 February 2023 to determine the penalty to be imposed for the contempt.

3. Costs be reserved.

I certify that the preceding paragraph(s) comprise the reasons for decision of the Supreme Court of Western Australia.

NL
Judicial Support Officer

1 FEBRUARY 2023